

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA
PLAINTIFF,
VS.
DAVID KLUCKA
DEFENDANT,

2:09-CR-523-KJD-LRL

MINUTES OF THE COURT

DATED: October 5, 2010

PRESENT:
THE HONORABLE **KENT J. DAWSON**, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PEGGIE VANNOZZI COURT REPORTER: FELICIA ZABIN

PRESENT FOR PLAINTIFF: LUCAS FOLETTA, AUSA

PRESENT FOR DEFENDANT: DAVID KLUCKA, PRO SE WITH JAMES ORONoz, STANDBY COUNSEL.
MICHAEL PANDULLO ALSO PRESENT FOR PART OF THE TRIAL

JURY TRIAL DAY 1

Proceedings begin at 9:06 A.M. Defendant is present, in custody. Deputy U.S. Marshal Alfredo Despy is present as case agent. The prospective jurors are not present.

The Court advises counsel and Defendant that it will instruct the jury on the legal definition of assault. The Court hears argument on Government's Motion for Bench Trial on Counts 2 and 3 of the second superseding indictment (#108.) The Court asks the Defendant if he has an objection to the second superseding information, which simply corrects typographical errors. The Court enters a not guilty plea as to the second superseding information. The Court will reserve its ruling on #108.

61 prospective jurors enter the courtroom at 9:20 a.m. The deputy clerk swears the prospective jurors. Voir dire begins. Following challenges for cause, the jury is passed for cause. Prospective jurors 40 through 61 are thanked and excused. All prospective jurors are excused to the hallway at 10:15 a.m.

Off the record, Counsel and Mr. Klucka exercise peremptory challenges.

Proceedings reconvene (on the record) at 10:40 a.m. All prospective jurors are present. 14 jurors are seated and sworn. The remainder are thanked and excused.

The Court admonishes the jury.

Mr. Foletta and Mr. Klucka present opening statements.

Sheri Ann Shipp is sworn to testify as a witness for the Government. Mr. Foletta examines the witness. Government's exhibit 2, 3, 4, 5, 6 and 1 is marked and admitted. Mr. Klucka examines the witness.

Proceedings recess from 12:32 PM to 1:32 PM.

The jury is not present. The Court asks if counsel have objections to the proposed jury instructions. Mr. Foletta advises the Court that he has asked the Appellate division to look at the Court's proposed instruction 13. Mr. Oronoz objects to the proposed instruction. The Court notes the objection.

The jury enters at 1:35 pm.

Sheri Shipp resumes the witness stand. Mr. Klucka resumes cross examination. The Court finds Mr. Klucka in contempt on three separate occasions during cross examination of this witness. Mr. Foletta and Mr. Klucka examine the witness. The witness is excused.

USA VS. KLUCKA

2:09-CR-523-KJD-LRL

October 5, 2010

Page 2

Felix Serrano is sworn to testify as a witness for the Government. Mr. Foletta and Mr. Klucka examine the witness. The Court cites Mr. Klucka for contempt once during cross examination and defers sanctions. Mr. Foletta examines the witness. The witness is excused.

The jury exits at 3:17 pm. The Court discusses the jury instructions with counsel and Mr. Klucka. Mr. Klucka indicates he will not testify.

Proceedings recess from 3:21 pm to 3:34 pm. The jury is present.

Alfredo Despy is sworn to testify as a witness for the Government. Mr. Foletta examines the witness. Government's exhibit 7 is marked and admitted. Mr. Klucka and Mr. Foletta examine the witness. The witness is excused.

At sidebar: Mr. Oronoz argues in opposition to Government's Motion to Request Bench Trial on Counts 2 and 3 of the Second Superseding Information (#108.) The Court grants the Government's Motion (#108.)

The Government rests. Defense rests.

The Court reads the jury instructions.

Mr. Foletta presents the Government's closing statement. Mr. Klucka presents his closing argument. The Court imposes sanction for violation of the Court's prior instructions and admonishes him for continued violation. Mr. Foletta presents Government's rebuttal statement.

The bailiff is sworn. The jury retires to deliberate at 5:52 pm. The alternates are admonished and released, subject to recall if required.

Proceedings reconvene at 6:20 pm. Defendant is present. The jury has informed the Court that it has reached a verdict.

The jury enters at 6:21 pm. The Clerk reads the verdict. Defendant David Klucka is found GUILTY of the offense charged in count 1 of the second superseding information. The jury is polled.

The Court thanks the jury and excuses them.

The Court FINDS the defendant guilty of the offenses charged in Counts 2 and 3 of the second superseding information.

Mr. Foletta asks the Court if the sentencing can be held in 30 days. He will speak with US Probation about the sentencing and possible terms and conditions. Mr. Oronoz advises that Mr. Klucka wishes the sentencing to take place quickly. Sentencing is set for November 10, 2010 at 9:00 am.

Proceedings adjourn at 6:30 PM.

LANCE S. WILSON, CLERK
U.S. DISTRICT COURT

/s/_____
DEPUTY CLERK